

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	)	
	)	MDL NO. 1456
	)	Civil Action No. 01-12257-PBS
	)	Subcategory No. 03-10643
THIS DOCUMENT RELATES TO:	)	
	)	Judge Patti B. Saris
<i>The City of New York, et al.</i>	)	
	)	
v.	)	
	)	
<i>Abbott Laboratories, Inc., et al.</i>	)	

**MARCH 2010 STATUS REPORT ON BEHALF OF  
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for March 2010, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: March 1, 2010

Respectfully submitted,

**City of New York and New York Counties in  
MDL 1456 except Nassau and Orange, by**

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**March 2010 Status Report on Behalf of the  
City of New York and New York Counties**

**FUL Summary Judgment Briefing**

On January 27, 2010, the Court entered an order granting plaintiffs' motion for partial summary judgment on FUL issues and denying defendants' joint motion for summary judgment on plaintiffs' "FUL Fraud" claims. *See* Docket No. 6863; Sub-docket 198.

On February 9, 2010, the Court amended its January 27, 2010 order on the FUL issues to reflect plaintiffs' settlement agreement with defendant Boehringer Ingelheim Roxane. *See* Docket No. 6905, Sub-Docket 202.

On February 12, 2010, defendants filed their amended Motion to Amend the Court's Amended February 9, 2010 Memorandum and Order on the FUL issues to Include a Certification for Immediate Appeal. *See* Docket No. 6911, Sub-Docket 204; Docket No. 6912, Sub-Docket 205.

On February 22, 2010, plaintiffs filed their Memorandum in Opposition to defendants' Motion to Amend the Court's February 9, 2010 Memorandum and Order on the FUL issues. *See* Docket No. 6923, Sub-Docket 208. This motion remains *sub-judice*.

**Motion to Exclude Expert Testimony of Harris Devor**

On February 8, 2010, the Court entered an order denying defendants' Motion to Exclude the Proffered Expert Report and Testimony of Harris Devor, C.P.A. *See* The Court's February 8, 2010 Electronic Order.

**Discovery**

**1. Motion to Compel Discovery from Defendant Merck**

On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck for all at-issue drugs with annual AMP/AWP spreads over 30 percent. *See* Docket. No.

6487; Sub-docket. No. 158.

On October 5, 2009, Merck filed its opposition to plaintiffs' motion to compel. *See* Docket No. 6572, Sub-docket No. 168.

On October 23, 2009, plaintiffs filed their Motion for Leave to File Reply Memorandum in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., and Exhibits to the Declaration of Joanne M. Cicala in Support Thereof Under Seal. *See* Docket No. 6609, Sub-docket No. 175. This motion remains *sub-judice*.

## **2. Schering's Motion for a Protective Order**

Given the Court's denial of GSK's motion for partial summary judgment [Docket No. 6735], plaintiffs presently will file their motion to lift the Schering Protective Order.

## **3. Defendants' Motion to Compel the production of privileged documents withheld by New York State Department of Health ("NY DOH")**

On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191. On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants' Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852; Sub-docket 197. This motion remains *sub-judice*.

## **Voluntary Dismissal of Claims**

On February 26, 2010, the Court entered orders granting plaintiffs' voluntary dismissal of defendants Fujisawa USA, Inc. and Fujisawa Healthcare, Inc., [Docket No. 6916; Sub-docket 206], and defendant Chiron Corporation [Docket No. 6920; Sub-docket 207]. *See* Docket No. 6928, Sub-Docket 210; and Docket No. 6927, Sub-Docket 209.

### **CERTIFICATE OF SERVICE**

I, Kathryn Allen, hereby certify that on the 1st day of March, 2010, I caused a true and correct copy of the above March 2010 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: March 1, 2010

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